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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,889	02/04/2004	Dean J. Richtsmeier	200313857-1	5369

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EXAMINER

KAPLAN, HAL IRA

ART UNIT	PAPER NUMBER
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2836

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/772,889

Applicant(s)

RICHTSMEIER ET AL.

Examiner

Hal I. Kaplan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-20, 25-28, 30-34, 36, 38 and 39 is/are rejected.
- 7) ☒ Claim(s) 17, 21, 24, 29, 35 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>20061218</u> |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Examiner wishes to thank the Applicant for the time and courtesies extended in the telephone interview on December 18, 2006.

Drawings

1. The drawings were received on December 27, 2006. These drawings are accepted.

Claim Objections

2. Claims 21 and 24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 21 and 24 fail to further limit claims 1 and 22, respectively, they replace a limitation from the independent claims (the second input) with a new limitation (the third input). The device can only have one functionality at a time. A dependent claim must contain every limitation of the claim from which it depends. See MPEP §608.01(n).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5-10, 18, 25, 28, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by the US patent of Bartok (6,459,060).

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As to claims 1 and 25, Bartok, drawn to a gull wing rocker switch, discloses an electronic device comprising: a substantially planar face (see Figure 3); a switch (138,112,120,122) configured such that successive actuations of the switch actuates the device between a first state and a second state; and a switch actuation mechanism (108,124) configured to actuate against a portion (138) of the switch a first time in response to a first manual input along the face and to actuate against the same portion (138) of the switch a second time in response to a second manual input along the face, wherein the second input has at least one characteristic (entered in a different location), other than time at which it is performed, distinct from the first input (see column 3, lines 1-53; column 3, line 64 - column 4, line 3; column 4, lines 58-67; column 5, line 66 - column 6, line 10; and Figures 3 and 5). The successive actuations of the switch are substantially identical in that they are mirror images of each other.

As to claim 2, a function is performed when the device is in a first state (on) and discontinued when the device is in a second state (off) (see column 6; line 45 - column 7, line 6).

As to claim 5, the switch actuation mechanism (108) includes a first movable surface and a second movable surface (protrusions - see column 3, lines 50-53 and Figure 3) and the first input includes moving the first movable surface and the second input includes moving the second movable surface.

As to claims 6 and 7, the movable surfaces are depressible (see column 3, lines 50-53 and Figure 3).

As to claim 8, the first surface and the second surface are spaced from one another along the face (see Figure 3).

As to claims 9 and 10, the movable surfaces have different indicia (shape and texture) (see Figure 3).

As to claims 18, 28, and 30, the actuation mechanism (108,124) includes an actuation member (108) pivotally supported along the face (110), wherein the first input includes pivoting the actuation member (108) in a first direction and wherein the second input includes pivoting the actuation member (108) in a second direction (see column 3, lines 45-53).

5. Claims 25-27 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by the US patent of Muz et al. (5,610,379).

As to claim 25, Muz discloses a method for actuating an electronic device, comprising: providing a switch (5) configured such that successive actuations of the switch that are substantially identical (performed in the same way, only the locations of the actuations are different) other than time at which they are performed, actuate the device between a first state and a second state; applying a first manual input, along a substantially planar face (1) of the device so as to actuate the switch (5) a first time; and applying a second manual input along the substantially planar face (1) of the device so as to actuate the switch (5) a second time, wherein the second manual input has at least one characteristic, other than the time at which it is performed, that is distinct from the first manual input (see column 3, lines 49-50 and 54-55; column 4, lines 25-39; and Figure 2).

As to claims 26 and 27, the steps of applying the first and second inputs include depressing first and second actuation members (4) operably coupled to the switch.

As to claim 31, the first and second inputs are parallel to one another (see Figure 2).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 3, 4, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartok in view of the US patent of Downing et al. (6,075,925).

As to claim 3, Bartok discloses all of the claimed features, as set forth above, except for the claimed print medium. Downing, drawn to a control panel for image forming devices, discloses an image forming device wherein printing upon a print medium is performed when the device is in a first state and discontinued when the device is in a second state (see column 3, lines 32-36 and column 5, lines 20-24). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have used the switching device of Bartok in the image forming device of Downing, because the switching device of Bartok insures a reliable return of the contact to a neutral off position (see Bartok, column 2, lines 26-32).

As to claim 4, the switch actuation mechanism (108) of Bartok includes a first movable surface and a second movable surface (protrusions - see column 3, lines 50-53 and Figure 3) and the first input includes moving the first movable surface and the second input includes moving the second movable surface.

As to claim 19, neither Bartok nor Downing specifically disclose an imaging material dispensing device. However, Downing discloses a laser printer (100), and it is inherent that a laser printer comprises an imaging material dispensing device (toner cartridge). Downing also discloses a controller (20) coupled to a switch (15), wherein

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the dispensing device dispenses imaging material and discontinues dispensing imaging material in response to the control signals (see column 5, lines 42-45).

10. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartok in view of the US patent of Parks et al. (5,877,746).

As to claims 9-13, Bartok discloses all of the claimed features, as set forth above, except for the first movable surface and the second movable surface having distinct indicia. Parks, drawn to a user interface for all-in-one integrated office system, discloses two buttons (22,23) with distinct indicia (Start,Stop), wherein the Start button is green and the Stop button is red (see column 13, lines 6-18). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to the device of Bartok with green and red start and stop buttons, as taught by Parks, so that a novice user can determine which button to press to perform a given function and be able to stop the device in an emergency. In addition, the selection of green and red as the colors is a design decision based upon the device's intended use and not a patentable distinction. See MPEP §2144.04.

11. Claims 14-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartok in view of the US patent of Heydner et al (5,558,211).

As to claim 14, Bartok discloses all of the claimed features, as set forth above, except for an extension coupled to the first button and the second button. Heydner, drawn to a push-button actuated safety switch, discloses an extension (26) coupled to first and second buttons (9,109) and movable relative to the switch (see column 7, lines 16-35 and Figure 3). It would have been obvious to one of ordinary skill in the art, at the

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time of the invention, to build the switching device of Bartok, with buttons used to depress the rocker, as taught by Heydner, in order to protect the rocker from mechanical damage (see Heydner, column 2, lines 6-9).

As to claim 15, Heydner discloses a guide guiding movement of the extension (26) relative to the switch (see column 6, lines 44-46).

As to claim 16, the extension (26) of Heydner is movable relative to the first button (9) (see column 7, lines 32-34).

As to claim 20, the buttons of Heydner are parallel to one another (see Figure 3).

12. Claims 32-34, 36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartok, and further in view of the US patent of Mori et al. (6,337,961).

As to claims 32-34, 36, and 38, Bartok discloses all of the claimed features, as set forth above, except for an image forming engine. Mori, drawn to a print control method and apparatus, and printer, discloses an image forming engine (17) actuatable between an active state in which the engine (17) forms an image upon a medium and an inactive state (see column 4, lines 49-56). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the switch of Bartok in a printer with an image forming engine, because it would be easier for the user to determine that the switch has been toggled and the device is working properly.

13. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartok in view of Mori, as applied to claim 32 above, and further in view of Parks.

As to claim 39, Bartok in view of Mori disclose all of the claimed features, as set

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forth above, except for the distinct associated indicia. Parks discloses two buttons (22,23) with distinct indicia (Start,Stop), wherein the Start button is green and the Stop button is red (see column 13, lines 6-18). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have used green and red start and stop buttons of the device of Bartok in view of Mori, so that a novice user can determine which button to press to perform a given function.

Allowable Subject Matter

14. Claims 22 and 23 allowed.
15. Claims 17, 29, 35, and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
16. The following is a statement of reasons for the indication of allowable subject matter:

Claims 17, 29, and 35 contain allowable subject matter because, although the prior art of record does teach actuating a switch by sliding an actuation member, there is no suggestion or motivation to combine a sliding actuation member with a rocker switch, absent Applicant's disclosure.

Claim 40 contains allowable subject matter because none of the prior art of record discloses or suggests the same portion of the actuator being depressed in response to both the first and second inputs, the inputs having at least one distinct characteristic other than time at which they are performed, in combination with the remaining claimed features.

17. The following is an examiner's statement of reasons for allowance:

Claims 22 and 23 are allowed because none of the prior art of record discloses or suggests successive actuations of the switch being completely identical other than time at which they are performed, wherein the two inputs have at least one distinct characteristic other than time at which they are performed, in combination with the remaining claimed features.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

18. Applicant's arguments, see Remarks, filed December 27, 2006, with respect to the objections and rejections of claims 1-31 under 35 U.S.C. 112, first and second paragraphs, have been fully considered and are persuasive. The objections and rejections of claims 1-31 under 35 U.S.C. 112, first and second paragraphs, has been withdrawn.

19. Applicant's arguments with respect to the rejections of claims 1-39 under 35 U.S.C. 103(a) have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patents to Kodaira et al. (4,024,367), Chu (5,810,109),

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Levendis et al. (6,576,855), Lam (6,590,175), and Liu et al. (6,794,592) disclose similar devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal I. Kaplan whose telephone number is 571-272-8587. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 571-272-2800 x36. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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